

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN ROBERT SELLERS, JR.,

Plaintiff,

v.

DOCTOR KAZM, et al.,

Defendants.

Civil Action No. 16-10426-DJC

ORDER

CASPER, J.

April 27, 2016

On February 26, 2016, plaintiff John Robert Sellers, Jr. filed a complaint, D. 1, without paying the \$400 filing fee or seeking leave to proceed without prepayment of the fee. In an order dated March 17, 2016, D. 4, the Court ordered Sellers to pay the \$400 filing fee or seek leave to proceed *in forma pauperis*. The Court warned the plaintiff that failure to do so within twenty-one days could result in dismissal of this action. In a footnote, the Court noted that prisoner plaintiffs, unlike other civil litigants, are not entitled to a waiver of the filing fee. Rather, these plaintiffs may proceed without prepayment of the filing fee but nonetheless must pay the fee over time. See 28 U.S.C. § 1915(b)(1)-(2).

The deadline for complying with the Court's order has passed without any response from the plaintiff. However, it has since come to the Court's attention that Sellers is not a "prisoner" within the meaning of the statute that requires prisoners to pay the filing fee over time. See, e.g., Perkins v. Hedricks, 340 F.3d 582 (8th Cir. 2003) (per curiam) (holding that a civilly committed person is not a "prisoner" within the meaning of 28 U.S.C. § 1915(h)); see also United States v. Sellers, C.A. No. 00-00467, D. 74 (E.D.N.C. June 5, 2014 (finding that Sellers continues to meet the criteria for civil commitment under 18 U.S.C. § 4246)). Thus, if granted *in forma pauperis* status, Sellers would not be required pay the filing fee over time.

In light of Sellers's lack of response to the Court's March 17, 2016 order, the Court will dismiss this action. However, the dismissal will be without prejudice to filing a motion to reopen the case. If the case is reopened and the Court grants Sellers *in forma pauperis* status, he will not be required to pay the filing fee.

Accordingly, this action is DISMISSED WITHOUT PREJUDICE to the plaintiff filing a motion to reopen within twenty-one days of the date of this order. If Sellers elects to file a motion to reopen, he must submit therewith either payment for the \$400 filing fee or a motion for leave to proceed *in forma pauperis*. The Clerk shall provide plaintiff with an Application to Proceed in District Court Without Prepaying Fees or Costs.

So ordered.

/s/ Denise J. Casper
United States District Judge